IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 6032 of 2005

Between:

1 Panja Bharat Mataji, S/o. Ranga Rao,
Nellore I Town P.S., Presently S.I. of Police,

Kaikalur P.S., Krishna District.
2 Pentapati Seshagiri Rao, S/o. Pedda Verranna,
Presently A.S.I., Palakol P.S., West Godavari District.

..... PETITIONERS

AND

A.P. State Human Rights Committee,

rep. by Secretary, Gruhakalpa, M.J. Road,

Nampally, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue order or orders, direction or directions, writ or writs, particularly one in the nature of “Writ of Certiorari" call for the records pertaining to HRC No.36 of 2003 on the file of State Human Rights Committee and quash the order dt. 30.12.2004 as illegal, arbitrary and to pass such other orders as are necessary in the interest of justice.

For the Petitioners: MR.K.L.N.SWAMY, Advocate.

For the Respondent: Government Pleader for Home.

The Court made the following:

ORDER: (per Sri B. Sudershan Reddy, J)

The State Human Rights Committee, Andhra Pradesh (hereinafter referred to as "the Committee") having registered suo motu case on the basis of the press report dated 03-11-2003 published in "The Hindu" (English Daily News Paper), "Eenadu" and "Vaartha" (Telugu Daily News Papers) issued notices to the petitioners and all the concerned. That after recording the evidence and upon perusal of the documents that were filed, the Committee recorded the following conclusions:

> "In the result, this Committee directs the State Government of Andhra Pradesh:
>
> (i) To pay a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as compensation to Mothukuri Krishna Kumari, Mothukuri Rama Kumari and Mothukuri Dhanalashmi who are the widow, second and third unmarried daughters of the deceased Mothukuri Nagabhushanam respectively for violating the Fundamental Right to life and liberty and causing the death of Mothukuri Nagabhushanam by its functionaries the S.I of Police Sri Panja Bharath Mataji (R-1) and Pentabati Seshagiri Rao, A.S.I. (R-2).
>
> (ii) The first daughter Mangathayuru of deceased Nagabhushanam is not awarded any compensation as she is already married and staying with her husband at Bimadolu village.
>
> (iii) We consider appropriate to apportion the compensation awarded in three equal shares, one for the widow and one each for the second and third unmarried daughters of the deceased.
>
> (iv) The Committee further directs the Government to pay

the compensation amount to the widow and second and third daughters of the deceased within a period of three months from the date of receipt of this order.

(v) Out of the total compensation amount of Rs.4,00,000/- the Government of A.P. may recover a sum of rs.1,00,000/- (Rupees One Lakh only) from S.I of Police Sri Panja Bharath Mataji (R-1) and Rs.50,000/- (Rupees Fifty Thousand only) from Pentabati Seshagiri Rao, A.S.I. (R-2).

(vi) The Committee further directs the Government to take appropriate disciplinary action against Respondents 1 and 2 in respect of the illegalities and violations committed by them as pointed out in this Order".

The simple case is that on the intervening night of 1/2-11-2003, the police patrolling abused one Mothukuri Nagabhushanam (since deceased), a restaurant owner at the old bus stand area for doing business beyond the prescribed time and taken him to II Town Police Station in a Rakshak Jeep at about 11.45 P.M. Thereafter, he was brought dead in an auto within fifteen minutes of his detention in the police station. According to C.W 1, Mothukuri Rama Kumari, daughter of the deceased Nagabhushanam, her father died due to the torture inflicted by the police.

On the request of the Committee, the Superintendent of Police furnished all the relevant copies of the documents including the First Information Report in Crime No. 290 of 2003, Inquest Report, Post Mortem Report, CD file and other documents. One of the Members of the Committee visited Eluru town and held preliminary enquiry. The statements of as many as five witnesses were recorded and also some documents were marked. Thereafter, the Superintendent of Police, West Godavari, Eluru was directed to submit some further documents relating to the incident and the same were submitted by the Superintendent.

The Committee after receiving further documents from the Superintendent of Police and upon perusal of the statements recorded by one of the Members, at Eluru framed the following points for its consideration:

"i) Whether Mothukuri Nagabhushanam ("deceased") was taken into custody by the Respondents from his "Devi Restaurant", Eluru at about 11.00 p.m. on 1-11-2003 and whether he died while he was in the custody of Police.

ii) Whether there was any violation of Fundamental Rights of the deceased Mothukuri Nagabhushanam guaranteed under Arts. 21 and 22 (1) of Constitution of India by the Respondents.

iii) Whether the Respondents violated any statutory provisions or the guidelines of Supreme Court issued in D.K. Basu's case in this matter".

Upon appreciation of the evidence available on record, the Committee found that both the petitioners herein were responsible for violating the fundamental right to life and liberty and causing the death of the said Nagabhushanam and accordingly directed payment of compensation.

Sri K.L.N. Swamy, learned counsel for the petitioners made an attempt to submit that the findings recorded by the Committee are not based on any evidence available on record. It is also contended that the Committee failed to appreciate the evidence available on record properly and therefore, the conclusions drawn are totally unsustainable in law. It is further submitted that at any rate, the 1st petitioner cannot be held responsible since he is in no way involved in taking the deceased Nagabhushanam to the police station.

We are not hearing any appeal against the order passed by the Committee. The only question that falls for our consideration is whether the order passed by the Committee suffers from any error apparent on the face of the record requiring our interference in exercise of Certiorari jurisdiction.

It is not specifically pointed out as to which portion of the evidence has not been taken into consideration by the Committee. Reappreciation of the evidence is neither possible nor permissible by this Court in Certiorari jurisdiction.

That so far as the case of the 1st petitioner is concerned, the Committee examined him as R.W 2. During his examination in chief itself, he deposed categorically that he gave instructions to the 2nd petitioner to take the Proprietor of Devi Restaurant (deceased) to the police station. The evidence is to the following effect:

> "I instructed R-2 to go and take the persons whose shops were opened till then to the P.S. and file petty cases. I also instructed R-2 specifically to go to Devi Restaurant which was not closed by then. I also instructed R-2 to take the proprietors of hotels and shops who were keeping their establishments open, to the police station……CW-10 also informed me that the person who was brought in Rakshak Jeep was the proprietor of Devi Restaurant".

The relevant evidence and the surrounding circumstances were taken into consideration by the Committee and the entire evidence available on record has been properly taken into consideration and appreciated by the Committee. In our considered opinion, even the 1st petitioner cannot escape from his liability. There is a clear and categorical finding that both the petitioners violated not only the statutory provisions but also the guidelines stipulated by the Supreme Court in ***D.K. Basu Vs. State of West Bengal*** while taking the deceased Nagabhushanam into custody without any cognizable offence registered against them. Both of them were responsible for the illegal detention of the deceased Nagabhushanam in the police station and subjecting him to torture.

For the aforesaid reasons, we find no merit in the writ petition and the same shall accordingly stand dismissed at the admission stage.

(B. Sudershan Reddy, J)

24-03-2005

(C.V. Ramulu, J)

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To

1. The Secretary, A.P. State Human Rights Committee,

Gruhakalpa, M.J. Road, Nampally, Hyderabad.

2. Two CCs to the Government Pleader for Home, High Court of

Andhra Pradesh, Hyderabad.

3. Two CD copies.